

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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January 12, 2026

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

TEHACHAPI CEMENT, LLC

Docket No. WEST 2025-0145
A.C. No. 04-00196-611511

BEFORE: Rajkovich, Chair; Jordan, Baker, and Marvit, Commissioners

ORDER

BY: Rajkovich, Chair; Jordan, and Baker, Commissioners

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) (“Mine Act”). On January 17, 2025, the Commission received from Tehachapi Cement, LLC (“Tehachapi”) a motion seeking to reopen a penalty assessment, which became a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a). The Secretary does not oppose the motion.

Under section 105(a), an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“JWR”). In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure, under which the Commission may relieve a party from a final order of the Commission on the basis of mistake, inadvertence, excusable neglect, or other reason justifying relief. *See* 29 C.F.R. § 2700.1(b) (“the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure”); *JWR*, 15 FMSHRC at 787. We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment was delivered on December 16, 2024, and became a final order of the Commission on January 15, 2025.

Prior to contest of these penalties, an administrative assistant submitted penalty contests on behalf of Tehachapi. In October 2024, Tehachapi’s Health and Safety Manager took on the responsibility of contesting penalties. On January 13, 2025, the Safety Manager was processing the penalty contest form and payment for the uncontested penalties for submission to MSHA’s St. Louis office. The Manager believed that the MSHA penalty office would forward the information for contest of 15 penalties to the correct division. This was his second time submitting a notice of contest. During the same week, the Manager checked MSHA’s Data Retrieval System for another mine under his responsibility and realized that prior citations at the other site had not been properly contested and that he had not been following the proper steps to timely contest. On January 16, 2025, he forwarded the assessment form to Tehachapi’s counsel who filed this motion to reopen the following day.

Tehachapi argues that its confusion about the contest process was due to inadvertence or mistake that constitutes good cause to reopen the penalty proceeding. The operator further contends that its intent to contest the penalties is clear as it did not submit payment to MSHA for the penalties it wished to contest. Tehachapi’s motion to reopen was filed within a reasonable time as it was filed one day after it realized it failed to timely contest the penalties and only two days after the deadline to file the penalty contest. Going forward, Tehachapi will forward all assessment forms to counsel when contesting penalties for counsel to submit the assessment forms to prevent untimely contests in the future.

The Secretary does not oppose the reopening of this case. She notes that Tehachapi has no history of delinquencies and has new processes in place for future timely assessment submissions. Although the Secretary does not oppose the Motion, she reminds Tehachapi to ensure that future contests are timely filed in accordance with MSHA’s regulations at 30 C.F.R. § 100.7 and the Commission’s procedural rules.

Having reviewed Tehachapi’s request and the Secretary’s response, we find that the operator has demonstrated that its failure to timely contest the assessment was the result of its mistaken belief that it should mail its contest form to MSHA’s St. Louis office instead of its Arlington office. *See Warrior Met Coal Mining, LLC*, 42 FMSHRC 771 (Oct. 2020) (finding that operator’s misunderstanding and mailing of its contest form to the MSHA St. Louis Office the result of inadvertence, mistake, and excusable neglect); *AA Quarry, LLC*, 46 FMSHRC 979, 980 (Dec. 2024); *see also U.S. Silica*, 42 FMSHRC 926, 928 n.2 (Dec. 2020) (“As we have noted in previous cases, this is a common misunderstanding among miner operators”). Lastly, we note that Tehachapi motion was promptly filed after realizing that it had not been following the proper contest procedure, which led to its failure to timely contest here. *See, e.g., Heidelberg Materials US Cement LLC*, 45 FMSHRC 1004, 1005 (Dec. 2023) (quick action after recognizing an error militates in favor of reopening).

In the interest of justice, we hereby reopen this matter and remand it to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the

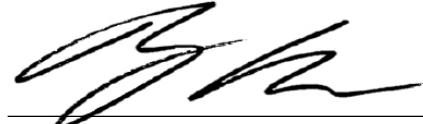
Commission's Procedural Rules, 29 C.F.R. Part 2700. Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.



Marco M. Rajkovich, Jr., Chair



Mary Lu Jordan, Commissioner



Timothy J. Baker, Commissioner

Commissioner Marvit, dissenting:

I write to disagree with the Majority in this case for the reasons set forth below.

In *Explosive Contractors*, I dissented and explained that Congress did not grant the Commission the authority to reopen final orders under section 105(a) of the Mine Act. 46 FMSHRC 965, 968 (Dec. 2024) (Marvit, M., dissenting). The Commission's repeated invocation of Federal Rule of Civil Procedure 60(b) cannot overcome the statutory language. However, in *Belt Tech, Inc.*, I explained in my concurrence that "the Act clearly states that to become a final order of the Commission, the operator must have received the notification from the Secretary." 46 FMSHRC 975, 977 (Dec. 2024) (Marvit, M., concurring) (citing *Hancock Materials, Inc.*, 31 FMSHRC 537 (May 2009)). Taken together, these opinions stand for the proposition that the Commission may not reopen final orders under its statutory grant, but an operator may proceed if it has not properly received a proposed order.

In the instant case, as the Majority recounts, the Commission's order became final under the language of section 105(a). The Majority, however, votes to reopen the case. The Mine Act has not granted us authority to reconsider final orders of the Commission as I set out more fully in *Explosive Contractors*. To the contrary, it has limited our authority to do so. Therefore, I respectfully dissent and would deny reopening.



Moshe Z. Marvit, Commissioner

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